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No. 10-980

In the Supreme Court of the United States

EVAN GRIFFITH,

Petitioner,

v.

DAVE REDNOUR, WARDEN,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF ACADEMICS AND FORMER STATE AND FEDERAL JUDGES AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICI CURIAE*[1]

Amici are twenty-six former federal and state court judges and current law school professors identified in the Appendix, with strong interests in the proper operation of state and federal courts and the proper functioning of the writ of habeas corpus. The *amici* judges have collectively served at various levels of the state and federal judiciary. Their views are based on decades of service to state and federal courts throughout the United States. In addition, the *amici* law professors have collectively spent many years studying and writing about the operation of the federal and state courts, criminal law and procedure, constitutional law, and other areas of relevance to this case. *Amici* are uniquely qualified to address the manner in which state court decisions are reviewed by federal courts and the impact that this decision will have on the principles of comity and federalism.

SUMMARY OF ARGUMENT

Evan Griffith filed a petition for leave to appeal ("PLA") the denial of his state postconviction petition in the Illinois Supreme Court fourteen days after the original due date. The Illinois Supreme Court granted Griffith's motion to file the petition *instanter*, thus making the petition timely under Illinois

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[1] Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici* and their counsel made a monetary contribution to its preparation or submission. Counsel of record for both parties received notice of *amici*'s intention to file this brief at least 10 days prior to the due date. The parties' letters consenting to the filing of this brief have been filed with the Clerk's office.

rules. Within a year after the Illinois Supreme Court denied his petition on the merits, Griffith filed a petition for a writ of habeas corpus in the United States District Court for the Central District of Illinois. The district court found that Griffith's petition was untimely under the 1-year limitations period of the Antiterrorism and Effective Death Penalty Act ("AEDPA"), 28 U.S.C. § 2244(d)(1). Pet. App. 27a-44a. The Seventh Circuit affirmed and denied rehearing en banc with three judges dissenting. Pet. App. 1a-19a.

The courts below expressly disregarded an Illinois procedural rule. The Illinois Supreme Court treated Griffith's PLA as timely under that court's well-established *instanter* filing rule. Illinois law is clear: a grant of a motion to file an otherwise untimely petition *instanter* functions as a retroactive extension of time. *Wauconda Fire Protection Dist. v. Stonewall Orchards, LLP*, 214 Ill. 2d 417, 425 (2005) (citing Ill. Sup. Ct. R. 315(b)); *Pitsch v. Cont'l & Commercial Nat'l Bank of Chi.*, 305 Ill. 265, 267 (1922). The district court and the Seventh Circuit, however, held that AEDPA's tolling rule does not recognize retroactive extensions of time, even when those extensions are accepted under state procedural rules.

In the grip of this error, the courts below concluded that Griffith's admittedly "properly filed" PLA had not been "pending" for the fourteen days that elapsed between the day it was originally due and the day Griffith's counsel filed his motion for leave to file the PLA *instanter*. Thus, AEDPA's limitations period did not toll for these fourteen days, and as a result, Griffith's federal petition was thirteen days "late." See 28 U.S.C. § 2244(d)(2).

This Court has held that federal habeas courts must rigorously adhere to state court procedural rulings. No principle is more essential to AEDPA's purpose of "further[ing] the principles of comity, finality, and federalism." *Williams v. Taylor*, 529 U.S. 420, 436 (2000). Yet the Seventh Circuit refused to give effect to a procedural rule of the Illinois Supreme Court on the grounds that the meaning of the term "pending" in AEDPA's tolling rule is uniquely immune from any deference to state procedural law. This anomalous conclusion cannot be reconciled with (1) Congress' manifest intent in enacting AEDPA, with (2) this Court's own interpretation of AEDPA's tolling rule in *Evans v. Chavis*, 546 U.S. 189 (2006), and *Carey v. Saffold*, 536 U.S. 214 (2002), or with (3) the Constitution's fundamental principle that the States are sovereign over their own judicial systems.

This Court has an exceptionally strong interest in correcting the Seventh Circuit's error because that error cuts to the very heart of our constitutional principles of judicial federalism. Indeed, the Court has long been vigilant in safeguarding the respect for the States' courts that our Constitution demands. For this reason, *amici* respectfully urge the Court to grant Griffith's petition for a writ of certiorari.

ARGUMENT

This case boils down to two essential points that bear on fundamental principles of federalism and comity. First, the Seventh Circuit refused to give effect to a valid procedural ruling of the Illinois Supreme Court for purposes of tolling AEDPA's limitations period. Second, the Seventh Circuit's application of AEDPA's tolling rule defeats that rule's critical purpose: to facilitate our dual system of state and federal enforcement of the Constitution, including, as

relevant to this case, its guarantee of due process of law.

I. The Seventh Circuit Abandoned Fundamental Principles Of Federalism And Comity By Substituting Its Own Judgment For That Of The Illinois Supreme Court.

It is "fundamental" to our "system of federalism" that "States may apply their own neutral procedural rules to federal claims." *Howlett v. Rose*, 496 U.S. 356, 372 (1990). "The general rule, 'bottomed deeply in belief in the importance of state control of state judicial procedure, is that federal law takes the state courts as it finds them.'" *Ibid.* (quoting Hart, *The Relations Between State and Federal Law*, 54 Colum. L. Rev. 489, 508 (1954)). Thus, in the context of criminal adjudication, our "fundamental interest in federalism" leaves the States free to fashion their own substantive, evidentiary, and procedural rules—from pretrial procedures all the way through discretionary review in the State's highest court of a post-conviction petition—"so long as they do not violate the Federal Constitution." *Danforth v. Minnesota*, 552 U.S. 264, 280 (2008).

These principles are acutely important to federal habeas corpus review. As this Court has recognized, "[t]here is no doubt Congress" enacted AEDPA "to further the principles of comity, finality, and federalism." *Williams*, 529 U.S. at 436. These principles serve vital interests of the States, and both Congress and this Court have taken great care to respect the States' interests and to ensure that federal courts do not undermine state processes. This Court has explained:

> Federal habeas corpus principles must inform and shape the historic and still vital relation of mutual respect and common purpose existing between the States and the federal courts. In keeping this delicate balance we have been careful to limit the scope of federal intrusion into state criminal adjudications and to safeguard the States' interest in the integrity of their criminal and collateral proceedings.

Ibid.; see also *Coleman v. Thompson*, 501 U.S. 722, 726 (1991) ("This is a case about federalism. It concerns the respect that federal courts owe the States and the States' procedural rules when reviewing the claims of state prisoners in federal habeas corpus").

Indeed, principles of federalism and comity resonate in all aspects of federal habeas corpus review, whether they are based in specific provisions of AEDPA (such as the exhaustion requirement or the tolling rule) or in this Court's jurisprudence (such as the procedural default doctrine). Although the influence of these principles is obvious in doctrines such as procedural default and exhaustion, they are equally important to the tolling provision, 28 U.S.C. § 2244(d)(2), at issue here.

A. Respect For State Court Procedural Rulings Is The Very Heart Of The Procedural Default Doctrine.

The procedural default doctrine is grounded in "concerns of comity and federalism." *Coleman*, 501 U.S. at 730-731. It "applies to bar federal habeas when a state court decline[s] to address a prisoner's federal claims because the prisoner had failed to

meet a state procedural requirement." *Id.* at 729-730. By precluding federal review of claims that were not properly presented to the state courts, this doctrine safeguards the States' sovereignty over their own judicial procedures at every stage of criminal adjudication. See *Murray v. Carrier*, 477 U.S. 478, 490-492 (1986) (holding that procedural default doctrine applies whether the default in question occurred at trial, on appeal, or on state collateral attack).

Accordingly, federal courts must give effect to state court procedural judgments so long as those judgments enforce procedural rules that are "firmly established and regularly followed" and hence "adequate" as a matter of federal constitutional law. *Beard v. Kindler*, 130 S. Ct. 612, 618 (2009). In *Coleman*, for instance, the petitioner had sought to appeal the denial of his state habeas petition to the Virginia Supreme Court, but his lawyer filed the notice of appeal three days late. 501 U.S. at 727-728. The Virginia Supreme Court held that Coleman had defaulted his federal claims under Virginia law, and the court declined to decide those claims on the merits. This Court deferred to the Virginia Supreme Court's application of the state's timeliness rule and held that, because of Coleman's state court default, a federal court could not decide his federal claims on the merits either. *Id.* at 729.

Likewise, federal courts must give effect to a state court judgment that *excuses* a state law default of a federal claim. *Harris v. Reed*, 489 U.S. 255, 262 (1989) (a "federal claimant's procedural default precludes federal habeas review * * * only if the last state court rendering a judgment in the case rests its judgment on the procedural default"). This is true regardless of whether the state court is applying a

discretionary procedural rule, like the Illinois Supreme Court's *instanter* rule, or a mandatory one. *Beard*, 130 S. Ct. at 618 (federal courts must give effect to a state court's application of a discretionary procedural rule that "permit[s] consideration of a federal claim in some cases but not others"); *Walker v. Martin*, No. 09-996, slip op. at 13 (U.S. Feb. 23, 2011) (holding that California's discretionary timeliness rule is an adequate state law ground). Either way, if the state courts excuse a procedural default and decide the federal claim on the merits, then federal habeas review is proper even though the state courts could have rejected the claim on an adequate state procedural ground. *Harris*, 489 U.S. at 262.

The procedural default doctrine teaches that the application of state procedural rules is at all events a state interest and, subject only to constitutional constraints, a matter of state judgment. In the present case, however, the Seventh Circuit artificially expedited the finality of a state conviction by disregarding a state procedural ruling. "The 1-year limitation period of § 2244(d)(1) quite plainly serves the well-recognized interest in the finality of state court judgments." *Duncan v. Walker*, 533 U.S. 167, 179 (2001). But the Seventh Circuit could not have concluded that Griffith's federal petition was untimely under § 2244(d)(1) if it had given Illinois' *instanter* filing rule the same retroactive effect as the Illinois Supreme Court. "[F]inality of state convictions is a *state* interest, not a federal one," *Danforth*, 552 U.S. at 280, and AEDPA does not authorize federal courts to promote this state interest by undermining the judgments of the States' own highest courts on matters of state law. *Cf. Jimenez v. Quarterman*, 129 S. Ct. 681, 686 (2009) (rejecting argument that "permitting a state court to reopen direct review * * * un-

dermines the policy of finality that Congress established in § 2244(d)(1)").

The Seventh Circuit's judgment disserves the States' fundamental interest in sovereignty over their own judicial procedures, while advancing no countervailing state or federal interest. In short, the Seventh Circuit abandoned the principles of comity and federalism to no good end.

B. Respect For State Court Procedural Rulings Is Necessary To Preserve The Integrity Of AEDPA's Exhaustion Requirement.

By disregarding the principle that federal habeas courts must give full effect to state procedural rules and judgments, the Seventh Circuit's decision jeopardizes other core values of federalism and comity—namely, the constitutionally ordained role of state courts in actively enforcing federal law, and the States' interest in correcting their own constitutional errors without premature federal interference.

"Under our federal system, the federal and state 'courts [are] equally bound to guard and protect rights secured by the Constitution.'" *Rose v. Lundy*, 455 U.S. 509, 518 (1982) (quoting *Ex parte Royall*, 117 U.S. 241, 251 (1886)). AEDPA safeguards the essential role of state courts in enforcing federal law by requiring state prisoners to "exhaust[] the remedies available in the courts of the State" before seeking a writ of habeas corpus in federal court. 28 U.S.C. § 2254(b)(1)(A); see also *Rose*, 455 U.S. at 518 ("The exhaustion doctrine is principally designed to protect the state courts' role in the enforcement of federal law and prevent disruption of state judicial proceedings"). Accordingly, state prisoners must

"give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process." *O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999).

The Seventh Circuit's decision threatens this "rule of comity." See *ibid.* If federal courts could ignore state procedural rulings, as the Seventh Circuit has done here, then "habeas petitioners would be able to avoid the exhaustion requirement by defaulting their federal claims in state court." *Walker*, No. 09-996, slip op. at 7 (quoting *Coleman*, 501 U.S. at 732). Federal courts would then be free to entertain claims that the state courts did not have an opportunity to adjudicate in the first instance. This preemptive interference with the States' enforcement of federal law is precisely what the exhaustion doctrine seeks to prevent. See, *e.g.*, *Duncan*, 533 U.S. at 179 ("The exhaustion rule promotes comity in that it would be unseemly in our dual system of government for a federal district court to upset a state court conviction without an opportunity to the state courts to correct a constitutional violation") (internal quotation marks omitted); *O'Sullivan*, 526 U.S. at 845 (same).

Furthermore, to give full effect to the exhaustion requirement, federal courts must recognize and give effect not only to failures to exhaust under state rules, but also to state rules that facilitate exhaustion. Here, the Illinois Supreme Court agreed retroactively to extend the time for filing Griffith's PLA, accepted that filing, and ruled on the merits. Having thus exhausted his state remedies, Griffith had 365 days to file his habeas petition in federal court, and he did so.

C. AEDPA's Tolling Provision Must Be Applied With Deference To State Court Procedural Rulings.

The principles of comity and federalism that animate the procedural default and exhaustion doctrines also require federal courts to give effect to state procedural rulings when applying AEDPA's tolling provision. As noted above, AEDPA requires a state prisoner to file a federal habeas corpus petition within one year of the date on which his conviction became final. 28 U.S.C. § 2244(d)(1)(A). AEDPA tolls this limitations period for the "time during which a properly filed application for State post-conviction or other collateral review * * * is pending." *Id.* § 2244(d)(2).

This Court has explained that "AEDPA's tolling rule is designed to protect the principles of 'comity, finality, and federalism,' by promoting 'the exhaustion of state remedies while respecting the interest in the finality of state court judgments.'" *Carey*, 536 U.S. at 222 (quoting *Duncan*, 533 U.S. at 178). In other words, "[t]he tolling provision of § 2244(d)(2) balances the interests served by the exhaustion requirement and the limitation period." *Duncan*, 533 U.S. at 179. This balance is critical to preserving the coordinated system of state and federal postconviction review that Congress carefully structured through AEDPA.

As the exhaustion rule demonstrates, post-conviction review in state court is critical to the States' interests in enforcing the Constitution and correcting their own errors free from federal interference. *Cf. Massaro v. United States*, 538 U.S. 500, 504-505 (2003) (recognizing that some claims of constitutional error, such as ineffective assistance of

counsel, are best adjudicated on postconviction review rather than on direct appeal). But there is no feasible way that state courts could routinely complete a full round of postconviction review within AEDPA's 1-year limitations period. It is the tolling provision that allows exhaustion to take place. See *Duncan*, 533 U.S. at 180 ("By tolling the limitation period for the pursuit of state remedies and not during the pendency of applications for federal review, § 2244(d)(2) provides a powerful incentive for litigants to exhaust all available state remedies before proceeding in the lower federal courts"). Thus, as a practical matter, AEDPA's tolling rule is what allows state and federal collateral review to coexist.

The tolling rule therefore serves a critical function in our federalist judicial system. "Our Federalism" represents "a system in which there is sensitivity to the legitimate interests of both State and National Governments." *Younger v. Harris*, 401 U.S. 37, 44 (1971). The federal courts have a manifest interest in "vindicat[ing] and protect[ing] federal rights and federal interests," *ibid.*, and the "writ of habeas corpus plays a vital role in protecting constitutional rights." *Slack v. McDaniel*, 529 U.S. 473, 483 (2000). AEDPA's tolling rule both "promotes the exhaustion of state remedies" and protects a state prisoner's ability to apply for federal habeas relief after the state postconviction process has run its course. *Duncan*, 533 U.S. at 179. It therefore serves compelling state and federal interests and preserves the "delicate balance" between the two that Congress and this Court have carefully sought. See *Williams*, 529 U.S. at 436.

The Seventh Circuit's decision, however, invites federal courts to give excessive scrutiny to state pro-

cedural judgments when applying AEDPA's tolling rule. In addition to determining whether the petitioner exhausted state court remedies and filed a federal petition within 365 days of the final state court ruling, a federal court employing the Seventh Circuit's approach would have free reign to inquire—at any stage of federal habeas review—whether every state filing was timely and whether every procedural requirement was met. Even if the state courts decided—explicitly as in this case or implicitly—that possible defaults would be waived, under the Seventh Circuit's approach, the federal courts could repeatedly reexamine the state court record in order to decide, as a matter of federal law, whether a possible default created a "gap" in the state postconviction review process. This unique lack of deference to state procedural law would not only burden the federal courts, it would also greatly damage the principles of comity and federalism that Congress and this Court have strived to protect.

D. The Seventh Circuit Disregarded AEDPA's Core Values Of Federalism And Comity As Well As This Court's Precedents.

The Seventh Circuit upset the balance between state and federal judicial systems by adopting an overly parsimonious interpretation of AEDPA's tolling rule that promotes finality above all. But contrary to the Seventh Circuit's analysis, federalism and comity—as well as this Court's prior precedents—establish that federal courts should adhere to a state court's decision to grant a retroactive extension of time in accordance with state rules.

In reaching its decision, the Seventh Circuit fashioned an untenable distinction between a "properly

filed" state court petition and a "pending" state court petition that cannot be reconciled with this Court's rulings in *Carey* and *Evans* or with federalism's basic principle of respect for state procedural law. The Seventh Circuit acknowledged that Griffith's PLA was "properly filed," since the Illinois Supreme Court granted his motion to file an otherwise untimely petition *instanter*. See Pet. App. 18a. But the Seventh Circuit concluded that Griffith's state court petition had not been "pending" during the fourteen days that elapsed between the statutory filing deadline and the Illinois Supreme Court's retroactive extension of that deadline. *Ibid.* Hence, according to the Seventh Circuit, Griffith had one year minus fourteen days from the denial of his state court petition to file in federal court. *Id.* at 17a-18a. Under this distorted interpretation of AEDPA's tolling provision, Griffith's federal petition was "late."

The Seventh Circuit's interpretation of the term "pending," however, is inconsistent with this Court's precedents, which do not distinguish between a "properly filed" petition and a "pending" petition. Rather, this Court's decisions instruct that the application of AEDPA's tolling provision must be highly deferential to state procedural rulings.

First, this Court has held that a state postconviction petition is "properly filed" for tolling purposes if it complies with the State's laws and rules, including the State's timeliness requirements, that govern such filings. *Artuz v. Bennett*, 531 U.S. 4, 8 (2000); see also *Rice v. Bowen*, 264 F.3d 698, 701 (7th Cir. 2001). Second, this Court has held that "[t]he time that an application for state postconviction review is 'pending' includes the period between (1) a lower court's adverse determination, and (2) the

prisoner's filing of a notice of appeal, *provided that* the filing of the notice of appeal is timely under state law." *Evans*, 546 U.S. at 191 (citing *Carey v. Saffold*, 536 U.S. 214 (2002). Thus, a petition that is timely and otherwise "properly filed" as a matter of state law remains "pending" from a lower court's entry of judgment until "final resolution" of the petition "through the State's post-conviction procedures." *Carey*, 536 U.S. at 219-220.

Carey and *Evans* dictate that AEDPA's limitations period should have tolled until the Illinois Supreme Court decided Griffith's postconviction petition on the merits. As Griffith demonstrates in his petition for a writ of certiorari (at 16-18), the Illinois Supreme Court's grant of the motion to file his PLA *instanter* functioned as a retroactive extension of time under Illinois Supreme Court Rule 315(b). See also *Wauconda*, 214 Ill. 2d at 425 (citing Ill. Sup. Ct. R. 315(b) (granting leave to file *instanter* operates as an extension of time for filing a PLA); *Pitsch*, 305 Ill. at 267 (granting leave to file an appeal bond *instanter* "was in effect an extension of the time for filing the bond"). As a result, Griffith's PLA was timely and "properly filed." Griffith filed his federal habeas corpus petition within one year of the Illinois Supreme Court's decision on the merits. The federal courts below should have accepted it as timely.

Instead, the Seventh Circuit refused to accept the consequences of the Illinois Supreme Court's decision to grant a retroactive extension of time. Relying on its previous lamentation that "[r]etroactive changes in timeliness are bad enough," *Fernandez v. Sternes*, 227 F.3d 977, 980 (7th Cir. 2000) (rejecting the interpretation of the term "pending" in § 2244(d)(2) that this Court subsequently approved

in *Carey* and *Evans*), the Seventh Circuit announced that "state courts' decisions do not have retroactive effect" and that "nothing a state court does" will render an otherwise late petition "pending" for purposes of AEDPA. Pet. App. 17a. More precisely, the Seventh Circuit held that for purposes of tolling AEDPA's limitations period, it would not recognize the Illinois procedure that does, in exceptional circumstances, grant a petitioner a retroactive extension of time for filing a PLA. See *id.* at 17a-18a.

A federal court, however, may not scuttle a state court's procedural decision on the grounds that the decision was, in the federal court's own judgment, a "bad" decision. Our fundamental values of federalism and comity afford the States sovereignty over their own judicial procedures, as do *Carey* and *Evans*. By requiring a federal court to treat a state habeas petition as pending throughout the state postconviction process so long as the petition was properly filed under state law, *Carey* and *Evans* ensure that federal courts give all due deference to state procedural decisions when applying AEDPA's tolling provision. In contrast, the Seventh Circuit exempted the term "pending" in § 2244(d)(2) from any deference to state law. Rather than "tak[e] the state courts as it [found] them," *Howlett*, 496 U.S. at 372, the Seventh Circuit nullified the Illinois Supreme Court's *instanter* filing rule for the purposes of AEDPA's tolling provision.

"The Illinois Supreme Court is, of course, the master of its own procedural rules, including the rules governing the time for appeal and any exceptions to those rules it chooses to recognize." *Jefferson v. Welborn*, 222 F.3d 286, 288 (7th Cir. 2000). The Seventh Circuit abandoned this fundamental precept

of federalism and comity when it dismissed Griffith's federal petition as untimely. AEDPA's clear mandate that federal courts respect the States' interests makes the Seventh Circuit's decision to undermine the Illinois Supreme Court all the more remarkable. Indeed, there is no reason why the term "pending" would be uniquely exempt from AEDPA's core value of deference to the States' courts. The Seventh Circuit's decision to treat it as such is especially peculiar given that the term "pending" is inextricably linked in AEDPA's tolling provision to the term "properly filed" (*i.e.*, the limitations period is tolled while "a properly filed application * * * is pending") (28 U.S.C. § 2244(d)(2)), which, as the Seventh Circuit acknowledges, is a matter of state law.[2]

Furthermore, the Seventh Circuit's concern that the Illinois Supreme Court's *instanter* filing rule threatens the finality of state convictions is unfounded. See Pet. App. 16a (suggesting that the rule will "sap" AEDPA's limitations period) (quoting *Fernandez*, 227 F.3d at 980). The Illinois Supreme Court grants retroactive extensions of time judiciously, and only in "extreme and compelling circumstances," like those found in this case. Ill. Sup. Ct. Rule 315(b) ("The Supreme Court * * * on motion * * * may extend the time for petitioning for leave to appeal, but such motions are not favored and will be

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[2] As pointed out in the dissent to the Seventh Circuit's denial of rehearing *en banc*, "[t]he panel tried to distinguish *Carey* as having dealt only with whether the petition was 'properly filed' under 28 U.S.C. § 2244(d)(2), and not with whether it was 'pending.'" Pet. App. 7a n.1. But "*Carey* and *Evans* themselves do not support the distinction" (*ibid.*)—to the contrary, *Carey* expressly states that "[t]his case raises three questions related to the statutory word 'pending.'" *Carey*, 536 U.S. at 217.

allowed only in the most extreme and compelling circumstances"). There is no realistic cause for concern that state courts will flippantly entertain post-conviction petitions, "however belated and however unmeritorious" they may be. See *De Jesus v. Acevedo*, 567 F.3d 941, 943 (7th Cir. 2009).

Far from opening the floodgates to widespread multi-year delays, Rule 315(b) merely grants the Illinois Supreme Court the limited discretion "to avoid the harsh results that sometimes attend consistent application of an unyielding rule" where, as here, "case-specific considerations" warrant doing so. *Walker*, No. 09-996, slip op. at 12. Indeed, in *Walker*, this Court recently reaffirmed that federal habeas courts must respect discretionary rules that permit the state courts to entertain an untimely petition in exceptional circumstances, see *id.* at 8 n.5, even if the state timeliness rule is open-ended rather than "stated in precise, numerical terms." *Id.* at 9. Here, the Seventh Circuit failed to do so because it mistakenly concluded that a State's discretionary timeliness rule is not entitled to deference when applying AEDPA's tolling rule.

For these reasons, AEDPA's tolling rule is in need of clarification from this Court. As Griffith demonstrates in his petition for a writ of certiorari, the circuit courts have reached conflicting conclusions about the meaning of (and the relation between) the terms "pending" and "properly filed" in AEDPA's tolling rule. See Pet. 19-22. Accordingly, *amici* respectfully urge the Court to grant review in order to clarify and reaffirm that, as a matter of federalism and comity, federal courts applying AEDPA's tolling rule, 28 U.S.C. § 2244(d)(2), must give full effect to state court procedural decisions.

II. The Seventh Circuit's Decision Cannot Be Reconciled With Principles Of Comity And Federalism That Are Essential To Our Dual System Of Government.

Principles of comity and federalism are not only indispensable to federal habeas corpus review under AEDPA, they are also fundamental to the functioning of our dual system of government as a whole. "States are independent sovereigns with plenary authority to make and enforce their own laws as long as they do not infringe on federal constitutional guarantees." *Danforth*, 552 U.S. at 280. For this reason, as we noted above, this Court "ha[s] been careful to limit the scope of federal intrusion into state criminal adjudications and to safeguard the States' interest in the integrity of their criminal and collateral proceedings." *Williams*, 529 U.S. at 436. In fact, the Court has long insisted that a principled application of federalism, comity, and respect for the States' courts is essential at *every* stage of the process of criminal adjudication, and not merely on federal habeas corpus review.

For instance, once a prosecution is pending in state court, a criminal defendant seeking to challenge the constitutionality of the statute under which he is being prosecuted must do so in state, rather than federal, court. *Younger v. Harris*, 401 U.S. 37 (1971). This Court's doctrine of *Younger* abstention, which generally prohibits a federal court from enjoining an ongoing criminal prosecution brought in good faith in state court, is rooted in the same "vital consideration" of "comity" that AEDPA's exhaustion requirement and tolling rule are designed to protect: that "the National Government, anxious though it may be to vindicate and protect federal rights and

federal interests," must "always endeavor[] to do so in ways that will not unduly interfere with the legitimate activities of the States." *Id.* at 44.

Likewise, federal bankruptcy courts may not discharge restitution obligations imposed upon convicted defendants in state criminal proceedings. See 11 U.S.C. § 523(a)(7); *Kelly v. Robinson*, 479 U.S. 36, 50 (1986) ("preserv[ing] from discharge any condition a state criminal court imposes as part of a criminal sentence"). In *Kelly*, the same principled "reflection of our federalism" that animated *Younger* guided the Court's interpretation of the Bankruptcy Code: federal courts "considering equitable types of relief" must take as "one of their most powerful considerations" the "States' interest in administering their criminal justice systems free from federal interference." *Kelly*, 479 U.S. at 49 (citing *Younger*, 401 U.S. at 44-45); see generally *Schlup v. Delo*, 513 U.S. 298, 319 (1995) ("the Court has adhered to the principle that habeas corpus is, at its core, an equitable remedy").

In *Kelly*, the Court found that Congress did not intend to depart from pre-Code bankruptcy procedure in part because that procedure was rooted in our "deep conviction" that federal courts, including bankruptcy courts, "should not invalidate the results of state criminal proceedings." See 479 U.S. at 47; *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 244-245 (1989) (discussing *Kelly*). Congress similarly enacted AEDPA in order to codify, not to depart from, the principles of comity and federalism that guided pre-AEDPA federal habeas practice. See, *e.g.*, *Slack v. McDaniel*, 529 U.S. 473, 483 (2000) ("AEDPA's present provisions * * * incorporate earlier habeas corpus principles"). *Kelly*'s reminder that fed-

eral courts must seek to interpret federal statutes in ways that respect established principles of comity and federalism—and that preserve the effect of state court judgments in subsequent federal proceedings—applies with equal force to AEDPA's tolling provision in § 2244(d)(2).

In addition, long before AEDPA was enacted, this Court had already foreclosed attempts by state prisoners to evade the exhaustion requirement by challenging the constitutionality of the "fact or duration of [their] confinement" under 42 U.S.C. § 1983. *Preiser v. Rodriguez*, 411 U.S. 475 (1973) (holding that state prisoner could not use § 1983 to challenge the constitutionality of disciplinary action that affected the length of his incarceration); see also *Heck v. Humphrey*, 512 U.S. 477, 487 (1994) (extending *Preiser* to bar damages suits under § 1983 that "would necessarily imply the invalidity of [a state prisoner's] conviction or sentence").

In *Preiser*, this Court rejected the affront to "federal-state comity" that would result from a federal court hastening the release of a state prisoner before allowing the state's own review process to decide, in the first instance, whether the prisoner's incarceration was unconstitutional. See 411 U.S. at 490-491. Like the exhaustion rule, *Preiser* is grounded in respect for the States' compelling interest in the administration of criminal justice free from undue federal interference. *Ibid.* And *Kelly*, *Preiser* and *Heck* reflect this Court's recognition that federal statutes that impinge upon the States' interest in the administration of criminal justice should, whenever possible, be interpreted in ways that preserve rather than undermine the effects of state court judgments.

The Seventh Circuit's decision cannot be reconciled with these fundamental precepts of comity and federalism. Indeed, the Seventh Circuit's decision is inconsistent with comity's demand that federal courts avoid unnecessary "frictions" with the state courts' enforcement of the local penal law and federal constitutional law. See, *e.g.*, *O'Sullivan*, 526 U.S. at 838. Rather than avoiding such "frictions," the Seventh Circuit went out of its way to create a conflict between AEDPA's tolling provision and the Illinois Supreme Court's *instanter* filing rule. Certiorari is warranted to correct the Seventh Circuit's "unseemly" interference with the State of Illinois' administration of its own criminal justice system.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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APPENDIX

APPENDIX

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